IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 156 of 1996
Date of Decision : 12.07.2007

C.I.T., Patiala

..... Applicant

Versus

Bal Krishan Jagdish Chand, Ahmedgarh

.....Respondent

CORAM : HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

Present: Mr. Yogesh Putney, Advocate,
for the Revenue.

JUDGEMENT

M.M. KUMAR, J.

The Revenue claimed that a substantial question of law would arise for determination of this Court from the order dated 23-01-1995 passed by the Income-Tax Appellate Tribunal Chandigarh Bench in I.T.A. No. 864/Chandi/1989 in respect of Assessment Year 1986-87. Accordingly, the Tribunal under Section 256(1) of the Income-Tax Act, 1961 (for brevity 'the Act') has referred the following substantial question for the opinion of this Court:

> *"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that various cash payments made to one party on one day were not required to be clubbed and treated as one cash payment and, for that reason, total cash payment and, for that reason, total cash payments exceeding*

Rs.2,500/- in a day to that party were not to be held as violative of section 40A(3) of the Income-tax Act?"

The respondent-assessee filed its return on 30-07-1986, in respect of the Assessment Year 1986-87 declaring its income of Rs. 97,150/-. The Assessing Officer issued notices under Section 142(1) and 143(2) along with a questionnaire dated 17-12-1986 which were duly served upon the assessee on 22-12-1986. The Assessing Officer noticed that the assessee had made certain payments in cash exceeding the amount of Rs.2500/-. On that basis, the aggregated amount of Rs. 3,24,257/- was added to the assessee's income on the ground that cash payments in violation of Section 40A(3) of the Act were made to ten firms.

The respondent-assessee was successful in persuading the Commissioner of Income-Tax (Appeal) to accept its contention to the effect that several payments had been made on one day in small instalments and each instalment/payment has to be treated as an independent cash transaction, therefore, Section 40A(3) of the Act could not be applied because in no transaction one individual cash payment has exceeded Rs. 2500/-. The Appellate Authority took the view that clubbing of several cash payments, made to two parties on one day was unwarranted and different entries recorded in the books of account on a particular day were required to be treated as independent entries. Each entry was found to be below Rs. 2500/-. The Appellate Authority has also relied upon Rule 6 DD (j) of the Rules and the Boards Circular No. 220 dated 31-05-1977. The Appellate Authority placed reliance on a judgement of the Orissa High Court in the case of **CIT v. Aloo Supply and Company, 1980 (121) ITR 680**.

On further appeal to the Income-tax Appellate Tribunal,

Chandigarh Bench, the order of the CIT (A) was upheld and the cross-objection filed by the respondent-assessee were dismissed. The view of the Tribunal is discernible from Para Nos. 12 & 13 of the judgement which reads as under:-

> *"12. We have considered the rival contentions and we are of the view that the matter has been examined in detail by the CIT (A) in respect of each of the payees and, therefore, we do not intend to interfere with the finding of fact. It has been noted by the CIT(A) that certain payments had been made by the assessee in the bank account of the payee and, therefore, such payments were not found to be cash payments. Though these were not by way of crossed bank draft or crossed cheque, looking to the nature of payment and bank account of the payee, the payments were rightly allowed. Similarly, payments made after banking hours are also found to be appropriate looking to the exigencies of the business. Payments made on a particular day in instalments for less than Rs.2500/- are also found to be allowable in the light of the decision of the Orissa High Court in the case of Aloo Supply Company (Supra). So far as the cross-objection is concerned. We find no force therein because no confirmation was at all filed to show that genuineness of the parties. The plea taken by the assessee that all the three parties had left Ahmedgarh is not based on any definite material or evidence on record. Therefore, in the absence of any evidence on record, regarding the genuineness of the transactions, these additions are found to have been rightly made. The assessee has failed to file confirmations from the three parties in question. Simply because certain purchases have been recorded by the assessee, the transactions cannot be said to be genuine in the absence of confirmations. Looking to the entire facts of the*

cases, we find no force in revenue's appeal as well as the cross-objection of the assessee.

13. Therefore, the revenue's appeal as well as assessee's cross-objection stand dismissed."

Having heard the learned counsel at some length, we are of the view that the question of law referred by the Tribunal is liable to be decided against the revenue. It would be profitable to make a reference to Section 40A(3) of the Act as it stood at the relevant time which reads as under:-

*"**Expenses or payments not deductible in certain circumstances**.*

40A. (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

(3) Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March 1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction:

***Provided** that where an allowance has been made in the assessment for any year not being an assessment year commencing prior to the 1st day of April, 1969, in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes any payment in respect thereof in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, the allowance originally made*

> *shall be deemed to have been wrongly made and the Income-tax Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment, and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made :*
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> ***Provided further*** *that no disallowance under this sub-section shall be made where any payment in a sum exceeding two thousand five hundred rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors."*

A perusal of the aforementioned provision shows that no deduction concerning payments made by an assessee is to be allowed, if the payment exceeding Rs.2500/- has been made otherwise than by a crossed-cheque. A perusal of the accounts submitted by the respondent-assessee as reproduced in the assessment order would show that an amount Rs.2500/- or even less than that amount has been paid by the respondent-assessee. Once this is the factual position, then the rigours of Section 40A(3) of Act as it stood in the Assessment Year 1986-87, would not be attracted to the facts of the present case.

There are further findings that the payments have been found to be made after banking hours which have been found to be appropriate after looking into the exigencies of business. We are further of the view that the Tribunal has also correctly applied the view taken by Orissa High

Court in the case of **Aloo Supply Company** (supra). Therefore, the question referred is answered against the revenue and in favour of the assessee.

(M.M. KUMAR)
JUDGE

July 12, 2007
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(AJAY KUMAR MITTAL)
JUDGE